

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

Safeway Stores, Inc., d/b/a Eagle Quality Centers

Employer

and

Case 19-RC-14365

International Brotherhood of Teamsters,
General Teamsters Union, Local 959, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions²:

Summary

The Employer is engaged in the business of operating a retail grocery store in Valdez, Alaska. The Petitioner seeks to represent a unit composed of all employees at the Valdez store, including department managers, assistant department managers and PICs (Persons-In-Charge). The Employer contends the department managers, assistant managers and PICs are supervisors within the meaning of Section 2(11) of the Act and, thus, should be excluded from the unit. The Employer also argues that seasonal or summer employees should be excluded from the unit while the Petitioner contends those employees should be included. Based on the following facts and legal analysis, I find that the department managers are supervisors and should be excluded from the appropriate unit. However, I reject the Employer's contention that assistant department managers are

¹ Both parties timely submitted briefs, which were considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

statutory supervisors³ and, thus, I shall include them in the unit. Similarly, I also find that PICs, as a class are not supervisors, but certain individuals in the PIC position possess certain additional duties and responsibilities, which are indicia of supervisory authority and which warrant their exclusion from the unit. I also find that temporary summer employees do not share a sufficient community of interests with unit employees and, thus, the summer employees shall also be excluded from the unit.

1.) FACTS

A.) Background

The Employer is engaged in the operation of a chain of retail grocery stores in numerous states, including the instant store in Valdez, Alaska, the only facility involved herein. The store is open seven days a week, from 4:30 a.m. to midnight, 364 days a year. The store has six larger departments; grocery, bakery, produce, general merchandise, meat and liquor and five smaller departments (deli, salad bar, video, dairy and floral). The salad bar department reports to the Produce Department Manager, the floral⁴ and dairy departments report to the Grocery Department Manager and the video department reports to the General Merchandise Department Manager. All of the larger department managers report directly to the Store Manager and the Assistant Store Manager. In effect, there are eleven department managers. In addition there are five PICs, a human resources manager, and an inventory specialist.⁵

The record reveals that the grocery department has approximately 23 employees in addition to the department manager and department assistant manager and utilizes from 11-14 summer employees.⁶ The bakery department has three employees, an assistant manager and department manager, plus one or two summer employees.⁷ The deli department does not have an assistant manager but has three employees plus two to three summer employees. The produce department has one employee in addition to the assistant department manager and department manager as well as one or two summer employees. General merchandising has two employees, a department manager, an assistant manager and one summer employee. The meat department has two employees, a department

³ I do find the grocery department assistant manager to be a supervisor for the reasons set forth below.

⁴ The parties have stipulated the floral manager is not a supervisor within the meaning of Section 2(11) of the Act, as there are no other employees in that department. Accordingly, I shall include the floral manager in the unit. Additionally, the record reveals that the Employer employs a Dairy Manager but the Employer does not contend that the Dairy Manager should be excluded on the basis of possessing supervisory authority and the Petitioner seeks to include the Dairy Manager in the Unit. In light of the above and the record as a whole, I shall include the Dairy Manager in the unit. Thus, discussions, in general about the department managers' supervisory authority in this Decision, do not apply to the Floral and Dairy Managers.

⁵ The parties stipulated to the exclusion of the store manager, assistant store manager and human resources manager on the basis that they possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act. Based on this stipulation and the record as a whole, I have excluded these three positions from the unit based on their supervisory status. I have also excluded the inventory control specialist from the unit as neither party asserts that this position should be included in the unit. Moreover, the record indicates that the inventory control specialist primarily works alone in her office carrying out her duties and responsibilities related to inventory matters.

⁶ Although it is not clear, it appears that the grocery department includes the checkers or cashiers and the courtesy clerks. It also appears that the Grocery Department Manager position had been temporarily vacant for about two months but was recently been filled.

⁷ As will be detailed below, the Employer hires additional employees during the summer months.

manager and assistant department manager and one summer employee. The liquor, video and salad bar departments do not have assistant managers but collectively have two to three employees as well as about three summer employees.

B.) Department Managers

Generally, all of the department managers have essentially the same authority and responsibilities with some exceptions noted above and below. In particular, the department managers are charged with operating their respective departments in a profitable and efficient manner. They are given manpower guidelines for each week developed by the Employer through a corporate computer program. Based on these guidelines, the department managers⁸ make out work schedules for their respective departments utilizing their employees to meet the hours requirements. The Store Manager does not independently review the schedules created by department managers. The department managers incorporate days off, vacation periods and other factors into the schedule. The department managers can vary the schedules without approval from the Store Manager, can approve overtime or shortening of a schedule. However, overtime is closely monitored on the corporate level and is generally restricted to emergencies.

Certain department managers (bakery, deli, general merchandise, grocery, produce, meat, liquor and video) can receive a bonus of up to 12% of their annual wages based on the profitability of their individual departments. The Salad Department Manager, assistant managers and PICs are not eligible for this bonus. Departmental profitability is determined by the manpower used, sales volume, control of ordering, allowance for shrinkage (spoilage or loss of products) and other factors. Customer service also enters into this calculation. The record further reveals that the produce, bakery, deli and meat department managers are also eligible for stock options, which is not available to the balance of the remaining department managers. All store employees, including supervisors, have access to the same benefit programs, with the exception of the stock options, bonuses and 40-hour guarantees mentioned above.

The Employer has a progressive disciplinary system, which the department managers are responsible for administering within their respective departments. This responsibility for administering the progressive disciplinary system includes verbal counseling, written warnings and a three-day suspension. Department managers do not have to consult with the store manager before administering any discipline with the exception of issues relating to security and sexual harassment and relating to terminations. Termination decisions are made jointly by a group of managers, which includes the human resources manager, district manager and store manager.

Department managers attend weekly meetings for managers (the assistant department managers do not attend except in the absence of the department managers), are paid significantly more than the employees in their department, are given a 40 hour guarantee for a week (employees and assistant managers are not guaranteed 40 hours), attend special training sessions for managers and are responsible for training the

⁸ The general merchandising manager creates the video department schedules.

employees within their departments.⁹ Department managers can and do temporarily transfer or loan employees within their departments to other departments depending on the business needs at any given time.

Department managers can make recommendations regarding terminations but the record only shows a very limited number of instances where this has occurred, possibly once or twice. However, in those cases detailed in the record, no independent investigation occurred and the recommendation of the department manager was followed.

Additionally, department managers do their own product ordering from Safeway warehousing or approved vendors. Department managers do not set wages or benefits and play very little role in hiring. All hiring is done by the human resource manager and in her absence, Ruth Gibbs. Gibbs is a PIC and a backup hiring coordinator and safety coordinator. Gibbs has independently hired approximately 15 employees since the summer of 2002.

C. Assistant Department Managers

It is apparent from the record, that the significant part of the assistant department managers' work-time is spent performing rank and file work. The assistant department managers tend to overlap the shifts of the department managers; possibly working a little earlier or later so there is continuing coverage. For instance, the assistant bakery department manager and the assistant bakery department manager's shifts overlap for all but three hours of the latter's shift. However, the record does not show the actual shifts worked by the other department managers and the assistant department managers. The assistant department managers also fill in for department managers during vacations and other absences.

Although Employer witnesses testified, in general terms, that the assistant department managers have the same day-to-day responsibilities and/or duties as the department managers in the absence of the department managers, the record revealed that it is the practice of the department managers to leave detailed instructions for the assistant department managers and employees for the times when the manager will not be present.¹⁰

The assistant grocery manager runs the night stocking shift (11:00 p.m. to 7 a.m.) and is the only manager on duty after midnight. The assistant grocery manager has recommended a termination, which was implemented without any independent investigation.

As noted above, the Employer argues, in general terms, that the assistant department managers have the same duties and responsibilities as the department managers. However, the record reveals that the assistant department managers do not do scheduling, receive bonuses or options and are not guaranteed 40 hours per week. With

⁹ The meetings generally deal with profits and sales margins and occasionally deal with personnel issues.

¹⁰ These instructions are normally detailed in writing and, in some cases, given orally. Additionally, the manager, when they come back to work, will check to see if the instructions they gave were completed in a timely and effective fashion.

respect to Employer contentions that the assistant department managers have the authority to discipline employees, the discussion below regarding the same contentions as it applies to PIC, is equally applicable to the assistant department managers.

The record reveals that the Assistant Grocery Department Manager directs a crew of employees during the Valdez store's stocking operations, which appear to occur following the daily closing of the Valdez store. The record reveals that no other supervisor is present during the after-hours stocking operations with the exception of the Assistant Grocery Department Manager. The record reveals that this individual has effectively recommended a termination, can discipline and assign work and exercises this authority on a regular basis during the entirety of her work schedule.

D.) Persons in Charge (PICs)

There are five PICs, including two night closing PICs (Jeremy Pulse and Louis Clark) and another PIC who also has additional hiring responsibilities. Leaving aside the night closing PICs, the record reveals the other three PICs work varying shifts that start at 9:00 or 10:00 a.m. or start at 3:00 p.m. and that end at 5:00, 7:00 or 11:00 p.m. These three other PICs are supposedly in charge of the "front end," cashiers, bag boys, etc., in the absence of the Store Manager and Assistant Store Manager. Employer witnesses, during the hearing in this matter, testified in a conclusionary fashion, that these PICs have the authority to extend shifts, authorize overtime and fill in gaps caused by unexpected absences. However, the record does not elaborate on what type of independent judgment these PICs use in dealing with staffing needs on a daily basis and the frequency with which they must deal with such matters in the absence of the Store Manager and/or Assistant Store Manager. Moreover, the record does not elaborate on what role the Store and Assistant Store Manager play with regard to staffing problems that arise during the PICs' respective shifts when the Store Manager and/or Assistant Store Manager are present. The Employer's evidence, in this regard, conflicts with what appears to be a general policy that department managers work with each other when transferring employees between departments to deal with unexpected work load problems. However, what is clear is that the PICs do not regularly schedule employees, do not receive any bonuses or options as described above and they are not guaranteed 40 hours per week.

Regarding the night closing PICs, the record reveals that they have the responsibilities of the Store Manager and/or Assistant Store Manager in the absence of those individuals. One of the night closing PICs, Jeremy Pulse works five days/week and the other, Louis Clark works two days/week and on Pulse's days off. The record reveals that the night closing PICs' shifts generally run from 4:30 p.m. to 12:30 a.m. and during their respective shifts, they are in control of the store when the Store Manager or Assistant Store Manager are not present. The control exercised by the night closing PICs covers altering schedules and assigning work. Typically the Store Manager and/or the Assistant Store Manager are not present in the store from about 8:00 p.m. on.

In support of the Employer's claim that the PICs have authority to discipline, the Employer submits that the record reveals that on one occasion, night closing PIC Louis Clark "asked" an employee to punch out and go home for using foul language at work. Clark then reported, in the form of a hand-written note, this matter to the Store Manager.

However, it is not clear what impact, if any, Clark's actions of asking the employee to punch out had on the employee; i.e., was the employee paid for the whole shift despite being asked to punch out and what if any additional action did the store manager take with regard to this situation when the matter was turned over to him. In sum, there is no indication as to what if any discipline was levied as a result of Clark's action, whether Clark effectively recommended disciplinary action to the Store Manager, whether the Store Manager decided not to pay the employee for the full shift, and/or whether the Store Manager conducted an independent investigation into the matter and took further action.

In support of the claim that assistant department managers and PICs have the authority to discipline, the Employer submitted a number of "corrective action notice" forms. All but one of these forms provide just three signature lines, one for the Store Manager, another for the "department/facility warehouse manager," and the last for the employee receiving the notice. The only other form in the record is apparently a new form recently utilized by the Employer only days before the hearing in this case. Not one of these forms is signed by an assistant department manager other than the Assistant Grocery Department Manager who signed one form, along with the Store Manager and employee, and in which the employee was threatened with termination if the employee subsequently engaged in similar conduct. Only one form was signed by a PIC, who is one of the night closing PICs. Most of the forms appear to be doing nothing more than reporting a behavioral/performance problem and, in some cases, does nothing more than merely suggest a non-disciplinary means to address the situation. None of the forms actually impose any discipline on the employee but, as noted above, two threaten discipline.

E.) Summer or Seasonal Employees

Employer witnesses testified that the Valdez store increases its business during the summer tourist months and utilizes an extra 30-50 employees during the busy period from approximately Memorial day to Labor day. However, when pressed for particular numbers in this regard, it appears that the range of hires is somewhere around 25 summer hires. Regardless, these summer employees are hired for a set period, depending on their availability (students etc.) and generally not retained after the summer months. They are part-time employees and receive no benefits. A small percentage, estimated at fewer than 5% by the Employer, stay past Labor Day and very few become permanent employees. Only about 1% of former summer employees ever return to work again for the Employer at the store the following summer. The summer employee pool usually consists of students and visitors wanting to spend a summer in Alaska whereas the pool of regular employees is apparently quite different. The summer employees generally receive the minimum wages paid to employees in the respective departments where the summer employees are assigned to work. The summer employees work side by side with unit employees during the summer and share common supervision with unit employees.

2.) ANALYSIS

A.) Legal Standards Regarding Supervisory Status

The term "supervisor" is defined in Section 2(11) of the Act as follows:

. . . any individual having authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

It is well settled that Section 2(11) of the Act is to be read in the disjunctive and that possession of any one of the enumerated indicia establishes supervisory status as long as the performance of the function is not routine or clerical in nature but rather requires a significant degree of independent judgment. *Stephens Produce Co., Inc.* 214 NLRB 131 (1974); *Kentucky River Community Care, Inc.*, 121 S. Ct. 1861 (2001). “A worker is presumed to be a statutory employee and the burden of proving a worker is a supervisor within the meaning of Section 2(11) of the Act falls on the party who would remove the worker from the class of workers protected by the Act.” *Hicks Oil & Hickgas, Inc.*, 293 NLRB 84 (1989). See also *Kentucky River Community Care, Inc.*, *supra*. “The Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights, which the Act is intended to protect.” *Hydro Conduit Corp.*, 254 NLRB 433 (1981). However, persons, who have authority to assign work, move employees from one task to another, and grant leave requests, have been held to be supervisors under the Act. *Louisiana Gas Service Co.*, 303 NLRB 908 (1991); *Massachusetts Coastal Seafoods, Inc.*, 293 NLRB 496 (1989). See also *Sunnyside Home Care Project*, 308 NLRB 346 (1992).

B.) Department Managers

With respect to the department managers, the Petitioner seeks to include them in the unit while the Employer contends that they possess indicia of supervisory authority as that term is defined in Section 2(11) of the Act and, thus, must be excluded from the unit. The record reveals that department managers possess and exercise the authority to independently discipline employees up to and including a possible three-day suspension. In their discretion, they transfer employees from department to department depending on business needs and assign employees to specific tasks.

Department managers are also responsible for ordering product for their respective departments, they schedule employees and adjust schedules as they see fit. The department managers are specifically assigned the responsibility to direct their respective departments and are rewarded based on how efficiently the department operates. The measure of success of the department is profitability, and the department manager’s reward for a successful operation is a significant bonus. In my view, being charged with the effective operation of the department and being charged with carrying out numerous responsibilities through subordinates, and especially being judged or rewarded based on the successful accomplishment of these responsibilities, as a whole, additionally demonstrates responsibility to direct the workforce with a degree of judgment and discretion that is more than routine or clerical in nature.¹¹ In view of the above and the record as a

¹¹ It is noted that the Salad Department Manager does participate in the Employer’s bonus plan. However, as noted herein, the Salad Department Manager is still charged with significantly the same duties and/or responsibilities with

whole, I find that the department managers possess and utilize more than one of the statutory indicia of supervisory status and, thus, are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude the department managers from the unit.

C.) Assistant Department Managers

The Employer contends the assistant department managers should be excluded from the unit due to their supervisory status. To the contrary, the Petitioner argues that the assistant department managers do not possess indicia of supervisory authority and, thus, should be included in the unit. The record reveals that the assistant department manager differ from the department managers in that they exercise their authority on an irregular and sporadic basis, with the exception of the Assistant Grocery Department manager. They only have the authority when the department managers are not present. The record shows this may be a short time each day if and when their schedules do not overlap, during managers' respective vacation periods and during other absences. As noted above, the Employer did not put the actual schedules into the record.

For instance, the assistant bakery manager may be in charge for as many as three hours at the end of the department manger's shift. However, the bakery manager, in her absences, provides detailed instructions for the assistant bakery manager and for each shift. These instructions relate to the work to be performed and how to accomplish the work, including clean-up assignments and the like. Assistant department managers normally perform rank and file work duties. The assistant department managers do not do scheduling, do not get a bonus or stock option nor are they rewarded in any way for the successful performance of their departments. They regularly do not attend the managerial meetings and any claimed exercise of discipline is very limited and irregular in nature. The Board has consistently held the sporadic and irregular exercise of supervisory functions does not make an individual a supervisor within the meaning of Section 2(11) of the Act. *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985) (exercise of supervisory authority when supervisor was on vacation or away for training not sufficient to find supervisory status).

The undisputed fact that detailed instructions are left for the assistant managers by the department managers establishes that the assistant managers clearly have less discretion in the operation of the departments than the actual department managers. Moreover, if the assistant managers were supervisors, the ratio of supervisors to non-supervisors in some departments would be one-to-one or relatively close to such a ratio in other departments. While such a ratio is not conclusive of the issue of supervisory status, it certainly raises a red flag warranting serious scrutiny by the Board.

The Board and Federal courts have held that an unbalanced ratio of alleged supervisors to subordinates militates against a 2(11) finding. E.g., *Highland Superstores*, 927 F.2d 918 (6th Cir. 1991) (16 supervisors overseeing 40 bargaining unit employees); *Health Care Logistics*, 784 F.2d 232 (6th Cir. 1986) (three supervisors to seven or eight employees); *Ohio River Co.*, 303 NLRB 696, 719 (1991) (three supervisors, four dock crew

regard to the performance of the salad bar department and utilizes the indicia of supervisory authority as the other department managers with regard to managing the salad department.

members). *Acme Markets, Inc.*, 328 NLRB 1208 (1999) (involving the supervisory status of pharmacy managers and a ratio of one supervisor to three employees). In *NLRB v. Grancare, Inc.*, 170 F.3d 662, 667 (1999), the Seventh Circuit, sitting en banc, observed that under the employer's theory the supervisory ratio would be 59 supervisors to 90 non-supervisors and remarked that "[s]uch a highly improbable ratio of bosses to drones 'raises a warning flag.'" The Board has also found supervisor to employee ratios of 38 to 35¹², 18-52¹³ and 1-5¹⁴ to be suspect. See also *Northcrest Nursing Home*, 313 NLRB 491, 498-99 (1993) (discussing that significance has been given to supervisory ratio, but stating that it is not dispositive of supervisory status). It is apparent from the staffing numbers noted above, that finding the assistant managers to be supervisors would result in a supervisor to employee ratio of two to three in the bakery department, two to one in the produce department, and a one to one ratio in the general merchandise department and meat departments. These ratios are highly improbable.

In view of the above and the record as a whole, I find the assistant department managers are not statutory supervisors and should be included in the appropriate unit, with the exception of the Assistant Grocery Department Manager. This individual exercises supervisory authority on the night stocking shift without any other supervisor present. She has effectively recommended a termination, can discipline and assign work and exercises this authority on a regular basis during the entirety of her work schedule.¹⁵ In light of the foregoing and the record as a whole, I find that the assistant grocery manager is a supervisor within the meaning of Section 2(11) of the Act and, thus, shall exclude her from the unit.

D.) Persons-in-Charge (PICs)

With respect to the PICs, the record reveals that they essentially fall into three categories, PICs in general, the night closing PICs, and the PIC who also acts as a hiring coordinator. I will separately discuss each of these three categories due to their distinguishing duties and responsibilities.

Regarding the regular PICs, the Employer contends that they possess and exercise the authority to discipline and have done so. In *Ten Broeck Commons*, 320 NLRB 806, 812 (1996), the Board, citing its decision in *Passavant Health Center*, 284 NLRB 887 (1987), stated that "In finding that the nurses had no disciplinary authority but instead performed only a reportorial function, we noted that the incident reports did not contain any

¹² *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000)

¹³ *North Miami Convalescent Home*, 224 NLRB 1271 (1976)

¹⁴ *Diaz Enterprises*, 264 NLRB 159 (1982)

¹⁵ The record provides insufficient evidence to warrant a leap by the undersigned to conclude that, because the Assistant Grocery Department Manager has the authority to discipline, the other assistant department managers also have similar authority. The Assistant Grocery Department Manager is alone working the store with a crew during her shift. Under these circumstances, it would be understandable that the Employer would want to vest her with indicia of supervisory authority during her shift. Moreover, specific examples of the exercise of authority by the Assistant Grocery Department Manager were submitted into the record -- the same was not done for the other assistant department managers. Thus, I will not make such a leap particularly in view of the long history of the Valdez store's existence and the Employer's failure to provide concrete examples of the exercise of disciplinary authority by the assistant department managers during the absence of their respective managers.

recommendations for disciplinary action and that any action taken was determined after the nursing office had inquired into the matter...Accordingly, because the written reports and warnings issued by the nurses had no independent effect and did not, by themselves, affect job tenure or status, the Board found the nurses not to be supervisors."

In light of *Ten Broeck Commons* and *Passavant Health Center*, and *Children's Farm Home*, 324 NLRB 61 (1997) the question arises as to whether an oral warning or written reprimand, issued independently by a PIC is sufficiently serious to satisfy the meaning of the word "discipline" as used in Section 2(11) of the Act. The record in this matter reveals that the store has been in existence for well over 8 years and the only two record examples of discipline fail to establish that employees were disciplined. In one example, the night closing PIC reported to the Store Manager that the former "asked" an employee to punch out for using foul language and in that same report essentially stated the matter was being turned over to the Store Manager. The corrective action notices, in the record, and the note from the night PIC to the Store manager fail to establish that the PICs either took some adverse action against employees or effectively recommended any significant discipline. In all these years of the Store's operations, it would seem that more concrete examples of actual discipline would be available if, indeed, PICs possess and exercise discipline as claimed by the Employer. In view of the scant and questionable record evidence in this regard, I find that the PICs do not possess the authority to discipline employees as that term as been defined by years of Board law.¹⁶

The Employer further contends that the PICs generally have the authority to alter work schedules in various forms. However, the record fails to detail what judgment, discretion and or interaction with other employees and/or managers is involved in the process. In particular, the record fails to establish what if any role the Store Manager, Assistant Store Manager, who work near the regular PICS, and the Grocery Department Manager, who manages the clerks and checkers, play in any of this. In sum, the record evidence is confusing, vague and conclusionary in this regard. What is clear in the record is that the regular PICs do not regularly and generally schedule clerks and checkers, do not receive the efficiency incentives (bonuses, stock options) that department managers receive, and do not attend managerial meetings. At most, the record reveals that PICs, only in the absence of other managers, may alter employees' schedules. However, sporadic and irregular exercise of supervisory authority does not qualify an individual as a supervisor within the meaning of Section 2(11) of the Act. *Latas de Alumina Reynolds*, supra. Thus, I find the Employer has failed to meet its burden of establishing that the PICs exercise independent judgment in connection with altering employees schedules and/or has failed to meet its burden of establishing that, beyond sporadic and irregular exercise, PICs alter employees' work schedules or assignments.

¹⁶ See *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989) ("mere authority to issue oral and written warnings that do not alone affect job status and does not constitute supervisory authority"). The power "to point out and correct deficiencies" in the job performance of other employees "does not establish the authority to discipline." *Crittenton Hospital*, 328 NLRB 879 (1999). Reporting incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations. *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997).

With respect to the night closing PICs, the record reveals that they are regularly in charge of the store operations, without any oversight, for a substantial period of time each day. They have the authority to alter schedules and assign work. This qualifies them as statutory supervisors within the meaning of Section 2(11) of the Act. *Louisiana Gas Service Co.*, 303 NLRB 908 (1991); *Massachusetts Coastal Seafoods, Inc.*, 293 NLRB 496 (1989). See also *Sunnyside Home Care Project*, 308 NLRB 346 (1992). Accordingly, I shall exclude them from the unit sought by the Petitioner.

Regarding the PIC who also serves as a backup hiring coordinator, Ruth Gibbs, the record reveals sufficient evidence to establish that Ms. Gibbs has personally hired numerous employees. This hiring authority is sufficient in itself to qualify her as a supervisor and to warrant her exclusion from the appropriate unit. Accordingly, I shall exclude the position occupied by Ms. Gibbs from the unit. See *Fred Meyer Alaska, Inc.*, 334 NLRB No. 94 (2001). I note, however, it is this hiring authority, not Ms. Gibbs' PIC duties and responsibilities, which warrant her exclusion from the unit as a supervisor.

E.) Summer or Seasonal Employees

The Petitioner seeks a unit that includes summer employees on the basis that summer employees share a sufficient community of interests with unit employees. The Employer contends it would be inappropriate to include the summer employees because they do not share a sufficient community of interests with unit employees.

Temporary or casual seasonal employees are generally excluded from a unit of regular full-time and part-time employees. *L&B Cooling*, 267 NLRB 1 (1983). Some of the factors to be considered in making this determination include preference or lack of preference in rehiring, *Bogus Basin Recreation Assn.*, 212 NLRB 8333 (1974); and fixed duration of the job, *Indiana Bottled Gas Co.*, 128 NLRB 1441 fn. 4 (1960). The record in this matter reveals that the summer employees are hired for certain tenure, are part time, essentially have no expectancy of recall the following summer, and have very little chance of becoming a regular permanent worker. Summer employees also receive no benefits and receive the lowest wage paid in the department to which they are assigned. Based on the foregoing and the record as a whole, I find that summer employees do not share a sufficient community of interests with unit employees. Accordingly, I shall exclude summer employees from the unit.

Based on the above and the record as a whole, I find that the following unit is the appropriate unit for an election:

All full-time and regular part-time employees, the Floral and Dairy managers, assistant store managers, and persons-in-charge employed by the Employer at its Valdez, Alaska location, excluding the inventory control employee, summer temporary employees, confidential employees, professional employees, guards, and supervisors, including the Store Manager, Assistant Store Manager, department managers, Assistant Grocery Department Manager, backup hiring coordinator, and the night closing persons-in-charge, as defined in the Act.

There are approximately 48 employees in the appropriate unit.

3.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters, General Teamsters Local 959, AFL-CIO.

A.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 2, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B.) Notice of Posting Obligation

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 9, 2003.

DATED at Seattle, Washington, this 25th day of April 2003.

Catherine Roth, Acting Regional Director
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